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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CONSUMER DEFENSE, LLC, *et. al.*,

Defendants.

**CASE NO. 2:18-CV-00030-JCM-BNW**

**DEFENDANTS MOTION FOR HEARING  
PURSUANT TO DAUBERT/KUMHO  
TIRE TO EXCLUDE ALL OPINION  
TESTIMONY OF FTC EXPERT  
WILLIAM VIOLETTE AND STRIKE  
COORESPONDING DECLARATIONS**

**ORAL ARGUMENT REQUESTED**

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## I. INTRODUCTION

Comes now Jonathan Hanley, respectfully requesting a hearing pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), to determine whether plaintiffs proposed expert testimony is both relevant and reliable. The plaintiffs seek to admit the expert testimony and declarations of William Violette and all supporting declarations of Emilie Saunders (Ex.'s 1-5). The Defendant's position is that Violette's expert opinion substantially fails to meet all 3 criteria outlined in Federal Rules of Evidence Rule 702 which are as follows: (1) is the testimony is based upon *sufficient facts or data*, (2) the testimony is the product of *reliable principles and methods*, and (3) the witness has *applied the principles and methods reliably* to the facts of the case. As further discussed below, this Court will be shown that these are the opinions of a straw expert whose report lacks any controlling standards that, alone, may provide a basis for excluding this expert testimony. *SQM North America Corp., v. City of Pomona* 750 F.3d at 1045 (quoting and citing *U.S. v. Chischilly*, 30 F.3d 1144 (9<sup>th</sup> Cir. 1994)). In addition to lacking controlling standards the report is marred with defects and unreliable methods that include:

- 1) *Not one* declaration is produced identifying the methods used in preparing any of the data used in the report. All we have is an expert 'opinion' that contains unsubstantiated data, derived from unknown methods from unknown sources.
- 2) Violette offers opinions without reviewing any client records, files, documents, receipts and without ever examining a single loan modification agreement.
- 3) Violette's report had a total reliance on the methodologies and analyses of an FTC paralegal who was without any *instruction, direction or supervision* from Violette.<sup>1</sup>

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<sup>1</sup> Violette confirms that Emilie Saunders, whose methodologies are known only to her, is the one who reviewed all client files and documents, prepared and coded documents, performed financial analysis and examined client billing etc... None of her methods are addressed in her declaration.

- 4) Saunders' unsupervised conclusions are the result of her unknown methodology and are drawn entirely from the results of her analyses that Violette admits not reviewing.
- 5) Saunders unsupervised methodologies are flawed, causing a 20% error rate – far exceeding the 5% margin of error that Violette considers statistically sound in his report.
- 6) Saunders analysis and conclusions are cloaked by Violette report as being those of an expert when they are not.

## II. BACKGROUND AND DEFENDANTS 56(d) REQUEST

In responding to plaintiffs' motion for summary judgment Hanley, with the corporate defendants joining in, requested relief pursuant to Rule 56(d). The defects of the FTC's expert opinion are a large part of that argument. Without belaboring the facts there are few key points that should be reiterated. Defendants produced detailed declarations from Bobbi Collins and Jonathan Hanley who examine, in detail, the errors of Saunders analysis. (Ex. 6 & Ex. 7)

*Saunders Flawed Methods Cause Violette's Analysis to miss the mark by 20% and 23% Respectively*

### 1. Random LoanPost Sample – Violette is Wrong by 20%

Attachment B of Violette's report is a random sample of the LoanPost database and its methodology is easily challenged. Saunders methods define certain individuals as clients even though they:

- a) Never sent in a single document.
- b) Cancelled within days.
- c) The file was closed by defendants for failure to return requested documents.

Saunders approach in determining who to classify as a 'client' was entirely at her discretion and not Violette's. This is *extremely* important because although Saunders would

1 have this Court believe she approached this task from a neutral perspective in a “light most  
2 favorable to the defendants.” She clearly did not. She had one objective – skew the defendants  
3 success rate by counting as many LoanPost files as ‘clients’ as she could no matter what the  
4 records reflected. Per Saunders standards the random sample of 200 files indicates that 163  
5 could be clients.  
6

7 The Collins declaration (ECF 303-5 & 303-6) provides an in-depth analysis of  
8 individuals erroneously identified as ‘clients’ who should not have been. (*Id.* ¶ 9-73.) In Collins’  
9 declaration she states “These errors cause a correct and proper analysis to be far outside the 5%  
10 margin of error the FTC’s Expert Report deemed to be statistically acceptable. This 95%  
11 ‘confidence interval’ is referenced several times in Violette’s Report. Upon review it is  
12 indicated that both attachment B and C are in error by well over 20% each.” (*Id.* ¶ 8.) Collins  
13 indicates approximately 50% of the 163 ‘clients’ are incorrectly dispositioned. This is crucial.  
14 This is proof positive the defendant’s success rate was 90% even while still applying a lax  
15 standard in defining who is a ‘client’.  
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## 19 2. Defendants Flash Drive - Violettes is Wrong by 23%

20 Attachment C to Violette’s report represents 200 files from the flash drive defendants  
21 produced to this Court for the PI hearing in February 2018 identified as Exhibit A. Violette’s  
22 analysis (technically Saunders) indicates 145 files out of 198 had documents evidencing the  
23 consumer had obtained a loan modification. However, Saunders never reviewed these clients  
24 against LoanPost – so her conclusion was that the remaining 53 received nothing. A direct result  
25 of her flawed methods causes Violette’s conclusions to be well outside his 5% margin of error.  
26 At least 45 of the 53 individuals identified as a ‘NO’ are incorrectly dispositioned which results  
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1 in a 96% incidence rate whereas the FTC expert claimed the incidence rate was 73.2%. Just as  
2 the Collins declaration attacks with specificity the random LoanPost sample the Hanley  
3 declaration, attacks with specificity the flash drive sample and is attached to the Request for  
4 56(d) Relief as ECF's 303-2 and 303-3.

### 7 III. LEGAL STANDARD

8 The Supreme Court has interpreted Rule 702 as requiring that the district court act as a  
9 "gatekeeper," ensuring that "any and all scientific testimony or evidence admitted is not only  
10 relevant, but reliable." *Daubert*, 509 U.S. at 589., see also *Kumho Tire Co.*, 526 U.S. at 141; and  
11 *General Electric Co. v. Joiner*, 522 U.S. 136, 142 (1997). Under Federal Rule of Evidence  
12 104(a), the proponent of the testimony bears the burden of establishing to the trial judge that "the  
13 pertinent admissibility requirements are met by a preponderance of the evidence." Fed. R. Evid.  
14 702 Advisory Committee's Note (2000 amends.) (*Citing Bourjaily v. United States*, 483 U.S. 171  
15 (1987)). The decision whether to admit or exclude expert testimony is within the broad discretion  
16 of the district court. *General Electric Co. v. Joiner*, 522 U.S. at 136-37; *United States v. Hall*,  
17 165 F.3d 1095, 1001. (7th Cir. 1999).

18 It would not be an abuse of discretion for this Court to exercise its gatekeeping powers in  
19 this instance. The Court in *Daubert* declared that the "focus, of course, must be solely on  
20 principles and methodology, not on the conclusions they generate." 509 U.S. at 595. Yet as the  
21 Court later recognized, "conclusions and methodology are not entirely distinct from one  
22 another." *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). While *Daubert* refers to  
23 scientific testimony, *Kumho Tire* held that "[t]he *Daubert* standard applies to all expert  
24 testimony, whether it relates to areas of traditional scientific competence or whether it is founded  
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1 on engineering principles or other technical or specialized expertise.” *Smith v. Ford Motor Co.*,  
2 215 F.3d 715, 719 (7th Cir. 2000); see *Kumho Tire*, 526 U.S. at 146. “[N]othing in either  
3 *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence  
4 which is connected to existing data only by the *ipse dixit* of the expert,” *Zenith Electronics Corp.*  
5 *v. WH-TV Broadcasting Corp.*, 395 F.3d 416 420 (7th Cir. 2005) quoting *General Electric Co.*,  
6 522 U.S. at 146. In *Manpower, Inc. v. Insurance Co. of Pennsylvania*, 732 F.3d 796 (7<sup>th</sup> Cir.  
7 2013) the 7<sup>th</sup> Circuit noted that reliability is determined by the “validity of the methodology  
8 employed by an expert, not the quality of the data used in applying the methodology or the  
9 conclusions produced.” *Id.* at 806 (quoting *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999)).  
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12 A 9<sup>th</sup> Circuit opinion in *SQM North America, Corp. v. City of Pomona*, 750 F.3d 1036  
13 (9<sup>th</sup> Cir. 2014) discussed when trial courts may exclude expert testimony as unreliable and  
14 reasoned they may do so when it is based on a “faulty methodology or theory.” *Id.* 1048.  
15 Opinions based on “unsubstantiated and undocumented information is the antithesis  
16 of...scientifically reliable expert opinion.” *SQM North America*, 750 F.3d at 1044 (quoting  
17 *Cabrera v. Cordis Corp.*, 134 F.3d 1418 (9<sup>th</sup> Cir. 1998)). In assigning trial courts a  
18 “gatekeeping” role the Supreme Court has instructed trial courts to assess “whether the reasoning  
19 or methodology underlying the testimony is scientifically valid and... whether that reasoning or  
20 methodology properly can be applied to the facts in issue.” *Daubert*, 509 U.S. at 592–93.  
21 Federal Rule of Evidence 702 was amended in 2000 and has essentially codified the *Daubert*  
22 standard. The amended rule requires that all adversarial expert testimony be subjected to a  
23 reliability test, and its factors mirror those set forth in *Daubert*, including (1) whether the  
24 expert’s scientific, technical, or other specialized knowledge will help the trier of fact to  
25 understand the evidence or to determine a fact in issue; (2) whether the testimony is based on  
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1 sufficient facts or data; (3) whether it is the product of reliable principles and methods; and (4)  
2 whether the expert reliably applied the principles and methods to the facts of the case. The *SQM*  
3 *North America* case provides a recent example of the Ninth Circuit’s application of its  
4 “methodology-only” standard in reversing the district court’s decision to exclude expert  
5 testimony. *SQM North America*, 750 F.3d at 1045.  
6

#### 7 8 **IV. DECLARATIONS FILED OVER 2 MONTHS AFTER THE** 9 **EXPERT OPINION CUTOFF SHOULD BE STRICKEN**

10 Violettes report was tendered to Hanley on May 3<sup>rd</sup> 2019. It contains a brief declaration  
11 from Emilie Saunders that only partially addresses her approach to defendant’s flash drive –  
12 attached as Exhibit A to their opposition to the PI. It addresses nothing *else*. What’s confusing  
13 is that her declaration specifically states, as it pertains to Exhibit C of Violettes report “*The*  
14 *documents were not reviewed to determine whether they evidenced a successful loan*  
15 *modification*”. (Ex. 1 Att. A ¶ 5.) However, Attachment C to Violette’s report is the analysis of  
16 approximately 200 files from that flash drive wherein *determinations are made as to whether or*  
17 *not certain client received loan modifications and, if so, what was the type*. Then who performed  
18 this analysis? Saunders states in her declaration she didn’t review the documents to determine  
19 whether they evidenced a successful loan modification and Violette makes no mention of it  
20 either. On top of that all of the analyses and methodologies used in preparing the data in  
21 Attachment B of Violette’s report are also left unexplained. Saunders doesn’t address  
22 Attachment B anywhere in her declaration and neither does Violette. We are left with an expert  
23 opinion that contains unsubstantiated data, derived from unknown methods from unknow  
24 sources. It seems plaintiff attempts to supplement the Expert opinion on July 15<sup>th</sup> 2019 by  
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1 slipping in additional declarations from Saunders. However, these are produced 2 and a half  
2 months after the report was due. The FTC is attempting to supplement their expert report  
3 months after the close of fact and expert discovery – yet plaintiff has resisted an extension of  
4 discovery at the turn of every corner. They simply can't have it both ways – ECF No.'s 255-12,  
5 255-13, 255-20, 255-21 & 255-22 must be stricken.  
6

7 This motion does not lack in evidencing the flawed methods of this expert report which  
8 should give this Court ample reason to grant the requested relief. The reports and all  
9 corresponding declaration must be stricken.  
10

## 11 12 V. RELIABILITY

13 Discovery in this case is massive. Violette's expert report was tendered to Hanley on  
14 May 3rd 2019 (Ex. 1). His methodology *might* appear to be scientific and technical in nature –  
15 but they are not. It will be shown that Violette accepted Saunders data, analysis and conclusions  
16 at face value and then regurgitated them under the guise of his expert report bearing his seal of  
17 approval. Violette never mentions, in his report or during deposition, of reviewed any records,  
18 documents, information, data or analysis other than what was provided to him by Saunders. In  
19 fact, Violette admits that he did not review any client records, files, documents, receipts or that  
20 he even examined a single loan modification agreement.  
21

22 Saunders was *never* under Violette's instruction, direction or supervision in employing  
23 the methodologies upon which Violette relied in forming his conclusions. Her methodologies  
24 were *never* discussed, mentioned or referenced in Violette's May 3rd 2019 report. Nothing in  
25 the record indicates that Violette *ever* reviewed *any* of Saunders conclusions for soundness.  
26

27 Violette *never* reviewed Saunders financial analyses (Perhaps the only material he may have  
28

1 been qualified to opine, were it not for the fact that he has never worked in banking or any  
2 tangentially related field).

3         Saunders provided Violette with unsubstantiated facts and spreadsheet data; which  
4 Violette relied upon and then incorporates into his report. (Ex. 1 at 10:8-19.) Saunders, in  
5 compiling this data, performed *all* of the following functions and her methodologies are never  
6 discussed in Violette's May 3rd 2019 report:  
7

- 8         1) *She* represents having reviewed client files that can contain over one hundred discrete  
9         highly technical notes further accompanied by hundreds of pages of documents.  
10
- 11         2) *She* represents having interpreted complex loan and mortgage documents as well as other  
12         records produced by lenders. Some documents are the production of records from  
13         Qualified Written Requests issued to lenders by the defendants on behalf of clients.  
14
- 15         3) *She* represents having compared various documents in client files to obtain data used in  
16         her 'before and after' spreadsheet calculations. The client documents from which  
17         Saunders extracts this data are unknown.
- 18         4) *She*, not Violette, forms conclusions as to client payment and interest rate changes using  
19         unknown data from unknown client documents.
- 20         5) *She* made determined the criteria used in defining who was a 'client' for the purposes of  
21         calculating defendant's success rate.
- 22         6) *She* created the demonstrably error ridden spreadsheet using *her methods* to determine  
23         which clients received a loan modification and which ones did not (Ex.1 Att. C). Her  
24         unsound methods resulted in an error rate that exceeded 20%. Violette states a 5%  
25         margin of error is statistically sound. (Ex. 1 at 10:2-4)  
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1 *Violette admits he did not review any documents*  
2 *and was not involved in how they were coded*

3 Violette concedes the data he received had already been researched, compiled, and coded  
4 by Saunders using her methods and without his instruction, supervision or direction. In  
5 confirming that his analysis was limited solely to documents compiled by Saunders Violette  
6 states: “I did not review the documents specifically. I only reviewed Ms. Saunders's coding of  
7 the document.” When asked if he gave Saunders instructions on document coding Violette  
8 confirms “I did not.” When asked if he knows whether Saunders has any training in economics  
9 or data analysis he replies “I do not” Violette answers in the affirmative when asked if his  
10 opinions are drawn *solely* from documents pulled and coded by Saunders. Violette confirms he  
11 performed no outside investigation beyond what was provided by Saunders. (Ex. 8 Violette  
12 Depo. 25:20 – 26:25).

15 *Violette states coding wasn't part of his analysis, he doesn't*  
16 *understand it and is not an expert in mortgage terminology*

17 Violette confirmed it was Saunders who “coded what was in the actual files” (*Id.* 20:3)  
18 that he “doesn’t know what a forbearance is, wasn’t requested to analyze that data and isn’t an  
19 expert in mortgage terminology” (*Id.* 35:5-8). Violette, when asked what the term ‘permanent’  
20 meant on a spreadsheet discussing a client of the defendants that stated: “Loan Modification?  
21 Yes. Type, Permanent.” Again states “I also don’t know what that coding is referring to. That  
22 wasn’t part of my analysis” (*Id.* 35:9-16).

25 *Saunders performed every task that Violette*  
26 *should have in forming his expert conclusions*

27 Violette states that Saunders “pulled the files...provided me with data that included  
28 whether the accounting was a customer...the customer obtained loan modifications, and

1 whether...customer made at least one payment to defendants” (*Id.* 25:20-25). In creating a  
2 spreadsheet Violette states “...she went -- for each of those names -- and pulled the files...and  
3 then created this spreadsheet in Attachment B” (*Id.* 30:18-21). Attachment B has 14 analytical  
4 columns pertaining to the 200 customers resulting in approximately 280 unique data fields. The  
5 methodology Saunders uses to determine the figures she inputs in this spreadsheet is an absolute  
6 mystery. Violette doesn’t address it in his report and Saunders doesn’t address it in her  
7 declaration (Ex. 1 Att. A). Violette only confirms that he relied *entirely* on Saunders  
8 methodology and work product in preparing his report. (*Id.* 10:8-19).

9 “This is the data that Emilie created by pulling the files for those 200 names”  
10 “Emilie...presented me with those two spreadsheets” “Ms. Saunders...compiled this particular  
11 document; correct? “That's right” “I did not use that percent change. That was provided to me by  
12 Emilie” “I took...200 observations from the list that Emilie initially provided me...I provided  
13 those...back to Emilie and...Emilie provided me with...the analysis of the 200 customer names”  
14 (Ex. 8 Violette Depo. 31:1-2, *Id.* 32:16-17, *Id.* 34:9-11, *Id.* 43:4-5, *Id.* 47:9-24 & *Id.* 43:4-5).

15 Government conduct in a recent disputes reveal a startling lack of candor toward the  
16 Courts. *see Shaffer Equip. Co.*, 11 F.3d at 457-59. The Fourth Circuit in *Shaffer*, facing a  
17 situation in which government lawyers concealed certain misrepresentations made by a  
18 government witness, recognized that “[t]he system can provide no harbor for clever devices to  
19 divert the search [for truth], mislead opposing counsel or the court, or cover up that which is  
20 necessary for justice in the end.” *Id.* at 457-58. In this matter, the FTC lawyers have done just  
21 that. In failing to have their expert adequately investigate client files notes and documents they  
22 have presented a report to this Court a report, purported to be that of an expert, that is nothing far  
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1 from it. They are using this report as a ‘clever device’ in leading this Court to believe it contains  
2 sound conclusions, born of sound data that was gathered using sound methodologies.

3 Such a display of bad faith in an effort to gain an advantage over Defendants is not only  
4 sanctionable, but is also a violation of the FTC lawyers’ duty of candor and good faith as officers  
5 of the Court. *Id.* at 457. *see also Stewart v. U.S. Postal Service*, 649 F. Supp. 1531, 1534  
6 (S.D.N.Y. 1986) (stating that prosecutors, even in a civil case, are held to a higher standard than  
7 a private litigant and there “[t]here are other manifestations of the interest in justice rather than in  
8 technicalities when the government is a litigant”).

9 Courts have recognized the responsibility of government lawyers to conduct themselves  
10 in litigation with the highest integrity and honesty. *see Stewart*, 649 F. Supp. 1534 (noting that  
11 different rules apply to government plaintiffs than apply to private parties with counsel and that  
12 “when the government is a party to litigation, substance should trump procedure”).  
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## 16 VI. LEGAL ARGUMENT AS TO RELIABILITY

17 The law requires the testimony of a proffered expert to meet a certain threshold of  
18 reliability. The testimony of Violette falls short of this threshold. Violette did no quality control  
19 to identify and correct methodological missteps. As a result, Violette’s conclusions are riddled  
20 with confirmed errors. In other words, beyond being unreliable, Violette’s calculations are  
21 simply wrong. The Fourth Circuit has confirmed that expert conclusions based on excluded  
22 assumptions are themselves inadmissible. *see, e.g., MyGallons LLC v. U.S. Bancorp*, 521 F.  
23 App’x 297 (4<sup>th</sup> Cir. 2013). In *MyGallons*, the plaintiff offered two experts, one of whom  
24 extrapolated damages from assumptions established by the other. On appeal, the Fourth Circuit  
25 held that the first expert’s opinions should have been excluded and that, without the first expert’s  
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1 assumptions, the second “had no basis” for his damages estimate. *Id.* at 307 (holding expert’s  
2 testimony should be excluded as speculative if it is based on unrealistic assumptions not  
3 supported by the record) (citing *Tyger Constr. Co. v. Pensacola Constr. Co.*, 29 F.3d 137, 142–  
4 43 (4th Cir. 1994))(additional citation omitted).

5  
6 Violette’s opinions are not proper expert testimony under this standard because he is not  
7 an expert in anything. As admitted, Violette has no specialized knowledge necessary in order for  
8 him to render an opinion. Because Violette’s calculations required no specialized knowledge or  
9 expertise and they are not proper expert testimony. see, e.g., *Schiller & Schmidt, Inc. v. Nordisco*  
10 *Corp.*, 969 F.2d 410, 415–16 (7th Cir. 1992) (Posner, J.) (excluding testimony of expert whose  
11 testing consisted “of simplistic extrapolation and childish arithmetic” and cautioning district  
12 courts to avoid allowing parties to cloak such testimony “with the appearance of authority by  
13 hiring [an expert] to mouth damages theories that make a joke of the concept of expert  
14 knowledge”); Cf. *Copeland v. Bieber*, No. 13-cv-246, 2016 WL 7042946, at \*3 (E.D. Va. Sept.  
15 8, 2016) (holding that expert’s opinion went beyond “simple arithmetic” where it analyzed  
16 complicated figures, critiqued opposing expert’s analytical model, and relied on specialized  
17 training to assist the trier of fact, but excluding testimony on other grounds).

18  
19 This is exactly the situation we have here. It was Violette who simply plugged numbers  
20 into tools, the origins and reliability of which he knows nothing about. Saunders, with the  
21 assistance she provided Violette, has exceeded even the most permissive definition ministerial  
22 acts. Her opinions exceed simple arithmetic and required the analysis of complex documents. It  
23 is she who is attempting to act as the expert. It is her interpretation and analysis of documents  
24 that are being presented as those of an expert. It is her unchecked and unknown methodologies  
25 that have been used by Violette. In *Joiner*, 522 U.S. 136, decided two years after *Daubert*, the  
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Supreme Court emphasized that “[n]othing in either Daubert or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.” *Joiner*, 522 U.S. at 146; see *ePlus, Inc. v. Lawson Software, Inc.*, 764 F. Supp. 2d 807, 812–13 (E.D. Va. 2011) (defining *ipse dixit* as “‘she herself said it’ or ‘something asserted but not proved’ . . . and ‘an unproven assertion resting on the bare authority of some speaker’”), *aff’d*, 700 F.3d 509 (Fed. Cir. 2012) (citations omitted). “[T]he prohibition against allowing *ipse dixit* testimony by experts merely clarifies that the district court’s broad discretion includes the discretion to find that there is ‘simply too great an analytical gap between the data and the opinion proffered.’” *Id.* (citing *Pugh v. Louisville Ladder, Inc.*, 361 F. App’x. 448, 454 n.4 (4<sup>th</sup> Cir. 2010) (additional citations and marks omitted); see also *Cooper*, 259 F.3d at 200 (court must ensure that an expert’s inferences are “derived using scientific or other valid methods”) (citing *Oglesby*, 190 F.3d at 250). As such, pursuant to Rules 702(a), Violette should not be permitted to testify as an expert in the trial of this matter.

Additionally, The Supreme Court has given trial courts broad discretion to strike unreliable and irrelevant expert opinion as they relate to the particular facts of each case. Violette’s opinions do not form the proper basis for a jury to even infer a reasonable, or remotely informed, conclusion as to the work product of the defendants as they relate to this case. As such, his report and opinion testimony should be excluded.

*Violette’s lack of qualification  
render his opinions irrelevant*

This Court should also consider excluding Violette’s report, opinions and testimony as irrelevant. To introduce expert testimony, the proponent must first demonstrate that the proffered expert is “qualified as an expert by knowledge, skill, experience, training, or education

1 to render his or her opinions.” Fed. R. Evid. 702. Given that Violette has no experience in  
 2 banking, lending, mortgages, loan modifications, finance or any other professional background,  
 3 testified that he is unfamiliar with even the most basic terminology (Forbearance, TPP &  
 4 Permanent) that alone demonstrates that he is not qualified to render his opinions. In his Rule 26  
 5 Report and further discussed during deposition, Violette was asked to provide the following  
 6 expert opinions: (1) The number of account names who were customers of defendants (2) The  
 7 number of customers who obtained loan modifications [sic] (3) The number of customers who  
 8 made at least one payment to Defendants before obtaining a loan modification. The total  
 9 absence of professional experience only cast further doubts over Violette’s qualifications. As  
 10 mentioned, the defendant’s business was built upon defendant Jonathan Hanley 20+ years of  
 11 mortgage, loan securitization and commercial banking experience. Violette lacks all of the  
 12 above with respect to this industry and the accounting background needed to qualify him to  
 13 examine the defendants accounting. During his deposition Violette admits that he has never  
 14 worked with any loan modification companies and has never been tasked with reviewing any  
 15 loan modification companies.<sup>2</sup> Violette further concedes that he has:<sup>3</sup>

- 19 (a) No background in the banking industry
- 20 (b) No experience in the loan modification business
- 21 (c) When asked “what is the definition, to you, of a loan modification?”, he replied “  
 22 It is whether there's a yes or no in these columns”.
- 23 (d) When asked what he understood the term ‘forbearance’ to be, his reply was “I  
 24 don’t know. I didn't wasn't requested to analyze that data, and I'm not an expert in  
 25 mortgage terminology.”
- 26 (f) When asked if he knew what “TPP” stands for he replied “I do not”.

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27 <sup>2</sup> Ex. 8 Violette Depo. 16:18-17:3

28 <sup>3</sup> (a) *Id.* 33:10-12, (b) *Id.* 33:13-15 (c) *Id.* 34:2-5 (d) *Id.* 35:1-8 (f) *Id.* 35:17-21



“When analyzing the relevance of proposed testimony, the district court must consider whether the testimony will assist the trier of fact with its analysis of any of the issues involved in the case.” *Ford Motor Co.*, 215 F.3d at 718. Almost all of the concerns of Rule 403 apply because Violette’s testimony, which represent the opinions of a non-expert as those of the expert, would create unfair prejudice, mislead the jury, and waste time. Violette’s opinions are not supported by a solid basis of known facts; they are supported only by presumptions that he was given solid data. “Unless the expertise adds something, the expert at best is offering a gratuitous opinion, and at worst is exerting undue influence on the jury that would be subject to control under Rule 403.” *United States v. Hall*, 93 F.3d 1337, 1343 (7th Cir. 1996). Nothing that Violette is qualified to testify to bears on any of the issues in this case. Accordingly, any testimony from Violette is not relevant to any issue in this case. Because there is no relevance to any issue, the court need not even apply Rule 403 balancing.

## VII. CONCLUSION

After a review of the evidence, facts, testimony and records herein defendants believe there will be no question that it is well within the Courts discretion to impose its “gate keeping” scrutiny as required by Federal Rule of Evidence, Rule 702 and *Daubert v. Merle Dow Pharmaceuticals, Inc.*, 509 U.S 579 (1993.)

For these reasons Hanley respectfully requests a hearing to determine whether the testimony of proposed FTC expert William Violette is both reliable and relevant and the entry of the attached proposed order striking the ECF’s 255-12, 255-13, 255-20, 255-21 & 255-22.

Dated: November 6<sup>th</sup> 2019

Respectfully Submitted,

/s/ Jonathan Hanley  
Jonathan P. Hanley

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 6<sup>th</sup> 2019 I electronically filed a true and correct copy of DEFENDANTS MOTION FOR HEARING PURSUANT TO DAUBERT/KUMHO TIRE TO EXCLUDE ALL OPINION TESTIMONY OF FTC EXPERT WILLIAM VIOLETTE AND STRIKE COORESPONDING DECLARATIONS and delivered same to all parties of interest *via* ecf:

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/s/ Jonathan Hanley  
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